

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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MEDIEN PATENT VERWALTUNG AG,

Plaintiff,

Case No. 10 Civ. 4119 (CM)(GWG)

v.

WARNER BROS. ENTERTAINMENT, INC.,  
TECHNICOLOR INC., and DELUXE  
ENTERTAINMENT SERVICES GROUP INC.,

Defendants.  
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**DEFENDANT DELUXE ENTERTAINMENT SERVICES GROUP INC.'S  
RESPONSE TO MEDIEN PATENT VERWALTUNG AG'S STATEMENT OF  
ADDITIONAL FACTS FOR WHICH THERE IS NO GENUINE ISSUE TO BE TRIED**

Pursuant to Rule 56.1(b) of the Local Rules of the United States District Court for the Southern District of New York, defendant Deluxe Entertainment Services Group Inc. (“Deluxe”) responds to the Statement of Additional Facts for Which There Is No Genuine Issue to be Tried filed by plaintiff Medien Patent Verwaltung AG (“MPV”) in support of its Cross-Motion for Summary Judgment of Infringement (“Additional Facts”).

22. Deluxe does not dispute the facts in Paragraph 22 of MPV’s Additional Facts.

23. Deluxe notes that each statement in Paragraph 23 of MPV’s Additional Facts is not followed by a citation to evidence which would be admissible as required by Local Civil Rule 56.1(d). Deluxe does not dispute the facts in Paragraph 23 of MPV’s Additional Facts.

24. Deluxe does not dispute the facts in Paragraph 24 of MPV’s Additional Facts.

25. Deluxe does not dispute the facts in Paragraph 25 of MPV’s Additional Facts.

26. Deluxe disputes a portion of the statements in Paragraph 26 of MPV’s Additional Facts. Deluxe does not dispute that “[e]xposing areas of the analog sound track to an LED during Deluxe’s FCT Sound process changes the color of the film print at those areas ... and thus changes the optical properties of the analog sound track of the film print.” Deluxe disputes that Deluxe’s FCT Sound process “add[s] the blue ovals” and that “the film projection equipment reproduces a different sound as a result of how the blue ovals are optically read by the film projection equipment.” Rather, the ovals represent areas of the film that have been exposed to an LED in order to delete portions of the analog soundtrack. (Aff. of Joseph Wary in Supp. of Def. Deluxe’s Mot. for Summ. J. of Non-Infringement, dated Aug. 24, 2012 (“Wary Aff.”), at ¶¶ 4, 7). These deletions, also referred to as mutes, are the absence of sound, i.e. silence. (Wary Aff., at ¶ 4; Decl. of Julie P. Bookbinder in Supp. of Deluxe’s Reply in Further Supp. of its Mot. For Summ. J. of Non-Infringement of the Patent-in-Suit and in Opp’n to Pl. MPV’s Cross-Mot. for

Summ. J. of Infringement, dated Sept. 21, 2012 (“Bookbinder Decl.”), at Ex. A (Tr. of the Dep. of Joseph Wary, dated Sept. 5, 2012 (“Wary Depo. Tr.”), at 38:25-39:3, 41:11-14)).

27. Deluxe disputes the statement in Paragraph 27 of MPV’s Additional Facts. Deluxe’s FCT Sound process entails exposing specific areas of film to an LED in order to delete portions of the analog soundtrack. (Wary Aff., at ¶ 4). These deletions are also referred to as mutes. (Wary Aff., at ¶ 4). Deleting a sound is called a mute. (Bookbinder Decl., at Ex. A (Wary Depo. Tr., at 154:17-18)).

28. Deluxe does not dispute the facts in Paragraph 28 of MPV’s Additional Facts.

29. Deluxe does not dispute the facts in Paragraph 29 of MPV’s Additional Facts.

30. Deluxe does not dispute the facts in Paragraph 30 of MPV’s Additional Facts.

31. Deluxe does not dispute the facts in Paragraph 31 of MPV’s Additional Facts.

32. Deluxe does not dispute the facts in Paragraph 32 of MPV’s Additional Facts.

33. Deluxe disputes the statements in Paragraph 33 of MPV’s Additional Facts. For both the Deluxe film prints shown in Exhibits A and B to the Wary Affidavit, the sound information contained in the analog sound track corresponds to, or is redundant to, sound information contained in a corresponding portion of the digital sound track, which may or may not appear on the film prints shown in Exhibits A and B to the Wary Affidavit. (Bookbinder Decl., at Ex. A (Wary Depo. Tr., at 88:17-90:15)).

34. Deluxe does not dispute the facts in Paragraph 34 of MPV’s Additional Facts.

35. Deluxe does not dispute the facts in Paragraph 35 of MPV’s Additional Facts.

36. Deluxe does not dispute the facts in Paragraph 36 of MPV’s Additional Facts.

37. Deluxe disputes portions of the statements in Paragraph 37 of MPV’s Additional Facts. Deluxe does not dispute that “[t]he blue ovals on the Deluxe film prints shown in Exhibits

A and B to the Wary Affidavit ... are formed by exposing those portions of the film medium to an LED ... and change the optical properties of the film medium relative to the portions of the analog sound track without blue ovals.” Deluxe disputes that the blue ovals “are added to the analog sound track ... which alters the reproduced or played back sound when the blue ovals are read by the film projection equipment.” Rather, the ovals represent areas of the film that are exposed to an LED in order to delete portions of the analog soundtrack. (Wary Aff., at ¶¶ 4, 7). These deletions, also referred to as mutes, are the absence of sound, i.e. silence. (Wary Aff., at ¶ 4; Bookbinder Decl., at Ex. A (Wary Depo. Tr., at 38:25-39:3, 41:11-14)).

38. Deluxe disputes portions of the statements in Paragraph 38 of MPV’s Additional Facts. Deluxe does not dispute that the inclusion of blue ovals on the analog sound track on the Deluxe film prints shown in Exhibits A and B to the Wary Affidavit result in a unique five digit code, and that the code pattern provides the unique print number and destination for the film print. (Wary Aff., at ¶ 4). The five-digit code is unique to each print and identifies the print. (Bookbinder Decl., at Ex. A (Wary Depo. Tr., at 76:12-25)).

39. Deluxe does not dispute the facts in Paragraph 39 of MPV’s Additional Facts.

Dated: September 21, 2012

By: /s/ Allan A. Kassenoff

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**COUNSEL FOR DELUXE ENTERTAINMENT  
SERVICES GROUP INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that on September 21, 2012, the foregoing was served upon all counsel of record via electronic service.

/s/ Allan A. Kassenoff  
Allan A. Kassenoff